IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12502 of 2004
Date of decision 2.4.2007

Tejinder Singh .. petitioner

Versus

Punjab State Electricity Board and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr.DS Patwalia, Advocate for the petitioner
Mr. DS Chanan Advocate for the respondents

M.M.Kumar, J.

The principal dispute raised in this petition filed under Article 226 of the Constitution is, as to whether the qualification of AMIE from the Institute of Mechanical Engineers (India) Mumbai, acquired by the petitioner is a recognised qualification for promotion to the post of Assistant Engineer in the quota for AMIE qualified technical subordinates like the petitioner In Punjab State Electricity Board (for brevity 'the Board') . The petitioner has approached this Court seeking a direction to the respondents Board to consider and promote him to the post of Assistant Engineer by accepting his degree of AMIE in terms of seniority granted to him by the Board in the afore-mentioned category w.e.f. the date persons junior to him have been promoted. The petitioner has also prayed for all consequential benefits including seniority, arrears of salary etc. A further prayer has also been made for quashing order dated 4.9.2003 (Annexure P.14) issued by the Board refusing to recognise the AMIE qualification equivalent to Bachelor of Engineer's degree.

Brief facts of the case are that the petitioner jointed as Junior

Specialist (Mechanical) in the Board in February, 1990. At that time he possessed the diploma in Mechanical Engineering. In December, 1997 the petitioner passed Section “A” and “B” of the Associate Membership Examination from the Institute of Mechanical Engineering (India) (Annexure P.1). The afore-mentioned degree is duly recognised by the Government of India as is evident from the perusal of letter dated 6.10.1981 (Annexure P.2) issued by the Government of India, Ministry of Education and Culture. The afore-mentioned letter of recognition has been duly accepted by the State of Punjab as it has circulated the letter of the Government of India dated 6.10.1981 to all concerned departments (Annexure P.3). It has been observed by the State of Punjab that the said qualification is deemed to be recognised for the purposes of employment to the service and posts in the appropriate field in various departments. The Board itself had written a letter on 20.12.2001 to the Institute of Mechanical Engineering Bombay seeking confirmation regarding recognition of Institute of Mechanical Engineers (India) Mumbai (Annexure P.4). The Institute in reply has stated that the degree has been issued by the Institute to the petitioner which is recognised by the Department of Education in the Ministry of Human Resources and Development at par with the degree in Mechanical Engineering from an Indian University. In that regard a reference was made to Notification No. F-18-31/71/T.2/T.7 dated 26.5.1976 and 6/24.10.1981 (Annexure P.5). In reply to another letter, the Ministry of Human Resources Development, Government of India on 1.1.2002 intimated to the Board that the certificate issued by the Institute of Mechanical Engineering was equivalent to a degree in Mechanical Engineering from a recognised Indian University

(Annexures P.6 and P.7). The Board was eventually satisfied that the petitioner was AMIE qualified person and on that basis granted him seniority amongst those who have AMIE qualifications. His name was included in the seniority list of AMIE qualified persons vide order dated 24.8.2001 (Annexure P.8) and he was allocated seniority list No. 121 A.

The service conditions of the petitioner are regulated by the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 (for brevity 'the Regulations'). According to Regulation 10(7) of the Regulations, 14 percent of the cadre posts of Assistant Engineers are reserved to be filled up from departmental employees possessing the AMIE degree qualifications. There is no dispute that the expression 'technical subordinates' as defined in appendix “E” appended to 1965 Regulations includes a Junior Specialist (Mechanical).

In view of his qualification, the petitioner was considered for promotion to the post of Assistant Engineer and vide memo no. 22.5.2002 particulars of the petitioner and other persons were requisitioned by the Board so as to consider them for further promotion to the post of Assistant Engineer (Annexure P.10). However, the persons junior to the petitioner were promoted in June, 2002 whereas the petitioner was ignored for promotion. He has claimed that the primary reason to ignore him from promotion was that the Board again started entertaining some doubts about the AMIE qualification of the petitioner. The petitioner had raised grievance against the illegal action of the respondent Board. Once again the names of all eligible persons were requisitioned for considering their cases for promotion on 12.5.2003. The name of the petitioner was included. He was again ignored by giving promotion to persons junior to him. The petitioner

sent a representation to the Board (Annexure P.12) which was followed by a legal notice dated 11.6.2003 (Annexure P.13). He filed a petition bearing CWP No. 10788 of 2003 for issuance of direction to the Board to consider and promote him as Assistant Engineer in the quota of AMIE category employees by keeping in view the seniority granted to him by the Board in the said category. On 17.7.2003 a Division Bench of this Court disposed of the writ petition with a direction to the Board to decide the legal notice of the petitioner within three months from the date of receipt of order. As a consequence the Board has issued Memo dated 4.9.2003 refusing to recognise the qualification of the petitioner of AMIE Specialist (Mechanical) equivalent to Bachelor of Engineer's degree. Consequently the name of the petitioner who had earlier been allocated seniority at No. 121 A has now been removed from the list of AMIE degree holders (Annexure P.14).

The stand of the Board in their written statement is that the AMIE qualification issued by the Institute for employment in central service has been withdrawn by the Ministry of Human Resources Development (Higher Education), New Delhi vide notification No. F 23-2/2001-TS 3 dated 10.6.2002 with immediate effect. It has been emphasised that the information has been sent by the Association of Indian University , New Delhi on 18.11.2003 (Annexure R.1). The Board has further pointed out that even the Punjab University vide their letter dated 14.7.1993 (Annexure R.2) has clarified that the petitioner's qualification is not recognised. In paras 10 and 11 of the reply, categorical stand of the Board is that the petitioner is not eligible for promotion as the qualification possessed by him is not acceptable because the recognition granted to the qualification

possessed by the petitioner for service in the Central Government stood withdrawn on 10.6.2002 and accordingly the name of the petitioner which was at serial No. 121 A in the list of the qualified persons has been deleted. It has also been asserted that the qualification of the petitioner cannot be treated at par with Bachelor of Engineering degree by the Board.

Mr. D.S.Patwalia, learned counsel for the petitioner has argued that the order dated 13.10.2003 (Annexure R/3) suffers from various illegalities. Learned counsel has made reference to Regulation 10(7) of the Regulations and argued that the case of the petitioner deserved to be considered under 14 % quota allocated and reserved for departmental employees possessing AMIE degree, inter-alia, Mechanical Engineering and who have completed three years service. He has maintained that Regulation 9 of the Regulations which deals with the direct appointment has nothing to do with the issue raised in this case. Therefore, the application of Regulation 9 of the Regulations is absolutely unwarranted. He has drawn our attention to letter dated 18.11.2003 (Annexure R/1) addressed by the Association of Indian Universities, New Delhi to the Board to show that the recognition to the AMIE degree acquired by the petitioner has been withdrawn with effect from 10.6.2002. It is also clarified that the withdrawal would not be effective in respect of those who has already possessed the degree before issuance of the notification by the Government of India on 10.6.2002. Learned counsel has insisted that the petitioner had acquired AMIE qualification in December, 1997 and therefore he has to be considered as qualified.

Mr. D.S.Chanan, learned counsel for the Board has submitted that the Courts are not clothed with the power to equate the degree of one

institution with another as it is not equipped with any such expertise. According to the learned counsel once the petitioner fails to answer the qualification postulated by Regulation 9 of the Regulations then the petitioner would not be qualified and his case could not be considered for promotion.

After hearing learned counsel for the parties, we are of the considered view that this petition merits acceptance. A reference in that regard be first made to Regulations 9 and 10(7) of the Regulations which are as under:

> " 9. No person shall be appointed as Assistant Engineer/ Elect. (on training) in the disciplines of Mechanical, Electrical, Electronics and Communication, Instrumentation and Control of Computer Sciences, unless he has passed BE in respective discipline from recognised Institution/ Univ. (Equivalency as notified by the Institute of Engineers/ Association of Indian Universities/ Punjab Univ./ Panjabi Univ. Calendar)"
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> "10(7). 14% of the cadre posts of A.Es shall be reserved for departmental employees (Technical Subordinates and Drawing Staff) possessing AMIE/ Degree in Electrical/ Electronics and Communication/ Mechanical/ Instrumental Control/ Computer Science Engineering and who have completed three years service in that capacity."

A conjoint reading of Regulation 9 with Regulation 10(7) of the Regulations shows that 14 percent of the cadre posts of Assistant Engineers have been reserved for technical subordinates like the petitioner

who have qualified AMIE degree inter-alia in the discipline of Mechanical Engineering. A further condition imposed is that he must have completed three years service in that capacity. It is further evident that Regulation 9 is couched in general language showing that for appointment to the post of Assistant Engineer in the discipline of Mechanical, the Bachelor of Engineering degree in respect of the discipline from a recognised institution/ University is a must. It has further been emphasised that equivalence as notified by the Institute of Engineers, Association of Indian Universities/ Punjab University and Punjabi University is to be considered. It appears that the qualification for promotion as Assistant Engineer envisaged by Regulation 9 read with Regulation 10(7) is either a degree of Bachelor of Engineering or AMIE degree. It is not disputed before us that the AMIE qualification was recognised by the Government of India, Ministry of Human Resources Development at par with the degree of Mechanical Engineering from the Indian University vide government notification dated 26.5.1976 and 6/24.10.1981 (Annexure P.1). It is further clear from another letter of the Ministry of Education and Culture that AMIE (Mechanical) was to continue as a recognised degree as has been disclosed vide letter dated 6.10.,1981 (Annexure P.2). The Government of Punjab has circulated those letters to all the departments including the Board. When the Board has addressed a letter dated 20.12.2001 to the Institute from where the petitioner has acquired his qualification the institute of Mechanical Engineers, Bombay has sent its reply on 15.1.2002 in the following terms:

> " We request reference to your letter No. 13792/SLT/AMIE/ Degree/ 01 dated 20.12.2001.

> In this respect please note that certificate dated 20.1.2000 has been duly issued by us to Shri Tejinder Singh and is recognised by the Department of Education in the Ministry of Human Resources Development of the Government of India at par with a degree in Mechanical Engineering from an Indian University vide government notification no. F-18-31/71/T.2/T.7 dated 26.5.1976, 6th and 24th October, 1981".

The Board has also made enquiries from the Government of India, Ministry of Education and Culture by letter dated 28.12.2001 which has also been replied in favour of the petitioner. It has been observed that qualification acquired by the petitioner is equivalent to a degree in Mechanical Engineering for the purposes of employment under the Central Government. It was after this long drawn process that the petitioner was accorded a place in the list of AMIE qualified persons for promotion to the post of Assistant Engineer and was allocated seniority no. 121 A (Annexure P.8) in the seniority list of Technical Subordinates eligible for promotion as Assistant Engineers. There is another communication dated 18.11.2003 (Annexure P.3) which shows that the department of Secondary and Higher Education, Ministry of Human Resources Development, New Delhi had withdrawn with immediate effect the recognition to the degree accorded to Associate Membership Examination (Sections "A" and "B") of the Institute for the purposes of employment in the Central Government. However, it has been emphaised that the withdrawal will not be applicable to those who had already passed the examination from the Institute before the issuance of notification dated 10.6.2002. However, the Board vide its order dated 4.9.2003 recorded a conclusion that on account of non recognition of AMIE

degree issued in respect of Institute of Mechanical Engineers (India) Bombay the name of the petitioner is deleted from the list of AMIE degree holders which was earlier placed at serial no. 121A in the seniority list (Annexure P.14).

In view of the above, the question before this Court is whether the de-recogntion of a decree could be retrospective especially when the notification issued by the Ministry of Human Resources Development dated 10.6.2002 itself postulate that the withdrawal was with immediate effect. The answer to the afore-mentioned question is obvious namely it has to be prospective. In that regard reliance may be placed on a judgement of Hon'ble the Supreme Court in the case of Suresh Pal v. State of Haryana (1987) 2 SCC 445. In that case the certificate course in physical education from Shri Hanuman Vayayam Prasarak Mandal, Amravati, Maharashtra was recognised by the State of Haryana in 1973 for appointment to the post of Physical Training Instructor in Government Schools. In 1985, the State of Haryana de-recognised the certificate course and the candidates who had taken admission in that year were not considered qualified. It was in this situation that Hon'ble the Supreme Court issued directions to the State of Haryana to recognise the certificate obtained by those persons and other similarly situated for the purposes of appointment as Physical Instructors in Government schools in Haryana. It was clarified that if any person has joined the course after 9.1.1985 he was not entitled to the benefit of the directions issued by Hon'ble the Supreme Court. In the present case, the certificate has been obtained in December, 1997 whereas the de-recognition by the Ministry of Human Resources and Development have been issued on 10.6.2002. It is also clear that on the basis of the recognition earlier

prevailing the petitioner was included in the list of AMIE qualified persons much earlier (P.8). Therefore, there is no reason to apply notification dated 10.6.2002 issued by the Ministry of Human Resources and Development to a degree acquired in December, 1997. Such a retrospective application of de-recognition is not permissible in view of the judgement of Hon'ble the Supreme Court in the case of Suresh Pal (supra).

The argument of Mr. D.S.Chanan, learned counsel for the Board that no equivalence of AMIE Degree with Bachelor of Degree qualification is permissible would not require any detailed consideration because we are not undertaking any process of equating the AMIE degree with Bachelor of Engineering Degree because of the language of Regulation 10(7) such a necessity would not arise as AMIE degree is considered to be independent qualification required for promotion to the post of Assistant Engineer. The question only is whether de-recognition of AMIE degree could be with a retrospective effect especially when the letter of de-recognition itself says that it was issued with immediate effect. The other argument that the Punjab University vide its letter dated 14.7.1993 (Annexure R.2) has not recognised the degree of Mechanical Engineering issued by the Institute would also not cut any ice because the Ministry of Human Resources and Development, Government of India had de-recognised this degree vide notification No. F 18-31/71/T2/T7 dated 26.5.1976 and 6/24.10.1981. Once it is recognised by the Ministry of Human Resources and the Association of Indian Universities then there could not be any going back and no reliance could be placed on the letter dated 14.7.1993 (Annexure R.2). Moreover a perusal of Regulation 9 of the Regulations would show that the certificate issued by the Punjab University

or other bodies are relevant only for the purposes of equivalence of AMIE degree with BE qualification whereas the letter dated 14.7.1993 merely states that the examinations of the Institute of Mechanical Engineers, Bombay are not recognised by the Punjab University. The letter does not fall within the four corners of the Regulation 9 of the Regulations and therefore, the argument raised by the learned counsel is devoid of any merit and the same is accordingly rejected.

For the reasons afore-mentioned this petition succeeds. The order dated 4.9.2003(Annexure P.14) and Order dated 13.10.2003 (Annexure R.3) are hereby quashed. The Board is directed to consider the case of the petitioner for promotion to the post of Assistant Engineer by recognizing his degree of AMIE (P.1). The petitioner shall be entitled to consideration for promotion with effect from the date persons junior to him have been considered and promoted with all consequential benefits. The needful shall be done by the respondents within a period of three months from the date of receipt of certified copy of this order.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

2.4.2007
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